



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1995

Ms. Y. Qiyamah Taylor
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1223

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33275.

The City of Houston (the "city") received an open records request for information on April 12, 1995. You requested a decision from this office on April 25, 1995. Consequently, as you acknowledge, you failed to request a decision within the 10 days required by section 552.301(a) of the Government Code.

Sections 552.301 and 552.302 require a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision from this office within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.*

You claim that, pursuant to section 552.101 of the Government Code, some of the requested information must be withheld from required public disclosure. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

You state that a portion of the open records request is for information that is contained in a special departmental personnel file maintained by the city's police department pursuant to section 143.089(g) of the Local Government Code.¹ Section 143.089 provides for the creation of two personnel files for police officers and fire fighters: one that is maintained by the city's civil service director and the other by the city police or fire department. You submit for our review the documents that you contend are protected from required disclosure pursuant to section 552.101 and section 143.089(g) because they are contained in the officer's police department internal personnel file. Additionally, you submit to this office an affidavit from a police officer assigned to the recruiting division of the police department. This officer states that one of his duties is to maintain proper records and assure that original documents and copies thereof are properly distributed in accordance with statutes and policies. The recruiting division officer states that the documents submitted for our review were retrieved from the recruiting division file regarding the officer at issue. The recruiting division officer explains that, as a matter of police department policy, the documents maintained in the recruiting division files have always been considered part of the police department internal personnel files as outlined in section 143.089(g) of the Local Government Code. The recruiting division officer also states that while some documents in a police officer's recruiting division file are forwarded to that officer's city civil service personnel file, other documents are intended for use by the police department only. You contend that you may withhold the submitted documents from the recruiting file of the officer at issue pursuant to section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.


Information maintained in the police department's internal personnel files is confidential and excepted from required public disclosure. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied). A request for information that is located in the special police department internal personnel file must be referred to the civil service director or his designee. See Local Gov't Code § 143.089(g); *City of San Antonio*, 851 S.W.2d at 949.

¹We assume that you have released the remaining information to the requestor.

Since the information submitted for our review is part of the police department's internal personnel file regarding the officer at issue it is confidential under section 143.089 of the Local Government Code and you must withhold the information pursuant to section 552.101 of the Government Code. We note that if any copies of the documents submitted for our review are also located in the officer's city civil service personnel file as outlined in section 143.089(a)-(f), those documents may be released in accordance with section 143.089(f).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/MRC/rho

Ref: ID# 33275

Enclosures: Submitted documents

cc: Mr. Richard L. Moore
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(w/o enclosures)